

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1057
Committee Substitute Favorable 6/7/22
PROPOSED SENATE COMMITTEE SUBSTITUTE H1057-CSSVxf-40 [v.3]
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Short Title: Mitchell/Hickory-Conover/Buncombe OT Changes.

(Local)

Sponsors:

Referred to:

May 26, 2022

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE MITCHELL COUNTY TO LEVY AN ADDITIONAL ROOM
OCCUPANCY TAX OF UP TO THREE PERCENT AND TO MAKE OTHER
ADMINISTRATIVE CHANGES; TO EXTEND THE TIME PERIOD FOR WHICH THE
CITIES OF HICKORY AND CONOVER MAY USE TWO-THIRDS OF THEIR
OCCUPANCY TAX PROCEEDS FOR CONVENTION CENTER EXPENDITURES;
AND TO MODIFY THE USES OF THE BUNCOMBE COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

MITCHELL COUNTY OCCUPANCY TAX CHANGES

SECTION 1.1 Chapter 141 of the 1987 Session Laws, as amended by Section 21(m)
of S.L. 2007-527, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Mitchell County Board of
Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public
hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross
receipts derived from the rental of ~~any room, lodging, or similar an~~ accommodation furnished by
~~a hotel, motel, inn, or similar place~~ within the county that is subject to sales tax imposed by the
State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax is in addition to any State or local
sales tax. ~~This tax does not apply to accommodations furnished by nonprofit charitable,
educational, or religious organizations.~~

(a1) Additional tax. – In addition to the tax authorized by subsection (a) of this section,
the Mitchell County Board of Commissioners may levy an additional room occupancy tax of up
to three percent (3%) of the gross receipts derived from the rental of accommodations taxable
under subsection (a) of this section. The levy, collection, administration, and repeal of the tax
authorized by this subsection shall be in accordance with the provisions of this section. Mitchell
County may not levy a tax under this subsection unless it also levies the tax authorized under
subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section
shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be
collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated
and charged separately from the sales records, and shall be paid by the purchaser to the operator
of the business as trustee for and on account of the county. The tax shall be added to the sales
price and shall be passed on to the purchaser instead of being borne by the operator of the
business. The county shall design, print, and furnish to all appropriate businesses and persons in
the county the necessary forms for filing returns and instructions to ensure the full collection of~~



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the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law. — A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. — Mitchell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mitchell County Chamber of Commerce. The Chamber of Commerce may spend funds remitted to it under this subsection only to promote travel and tourism in Mitchell County, to sponsor tourist-oriented events and activities in Mitchell County, and to finance tourist-related capital projects in Mitchell County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer. Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Mitchell County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. — Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. — To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. — Expenditures that, in the judgment of the Mitchell County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

(f) ~~Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

(g) ~~Repeal. A tax levied under this section may be repealed by a resolution adopted by the Mitchell County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer of Mitchell County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in Mitchell County, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 3. This act is effective upon ratification."

SECTION 1.2. G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties and county districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Graham, Granville, Halifax, Haywood, Henderson, Jackson, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, Wayne, and Wilson Counties, to Harnett County District H, New Hanover County District U, Surry County District S, Watauga County District U, Wilkes County District K, Yadkin County District Y, and the Township of Averagesboro in Harnett County and the Ocracoke Township Taxing District."

HICKORY-CONOVER OCCUPANCY TAX CHANGES

SECTION 2.1. Section 1(d) of S.L. 2009-169, as amended by Section 4.1 of Part IV of S.L. 2017-202, reads as rewritten:

1 "SECTION 1.(d) Distribution and Use of Tax Revenue. – The City of Hickory shall, on a
2 quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism
3 Development Authority. The funds remitted under this subsection must be used as follows:

- 4 (1) Through December 31, ~~2029-2039~~. – Prior to and through December 31,
5 ~~2029-2039~~, the Authority may use two-thirds of the funds remitted to it under
6 this subsection for improving, leasing, constructing, financing, operating, or
7 acquiring facilities and properties as needed to provide for a convention center
8 facility, including parking facilities for the convention center. The remainder
9 of the funds must be used to promote travel and tourism. Debt issued to
10 finance these improvements or facilities and that is secured by occupancy tax
11 proceeds remitted under this subdivision must mature on or before December
12 31, ~~2029-2039~~.
- 13 (2) After December 31, ~~2029-2039~~. – After December 31, ~~2029-2039~~, the
14 Authority must use at least two-thirds of the funds remitted to it under this
15 subsection to promote travel and tourism in the area and must use the
16 remainder for tourism-related expenditures."

17 **SECTION 2.2.** Section 3(d) of S.L. 2009-169, as amended by Section 4.1 of Part IV
18 of S.L. 2017-202, reads as rewritten:

19 "SECTION 3.(d) Distribution and Use of Tax Revenue. – The City of Conover shall, on a
20 quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism
21 Development Authority. The funds remitted under this subsection must be used as follows:

- 22 (1) Through December 31, ~~2029-2039~~. – Prior to and through December 31,
23 ~~2029-2039~~, the Authority may use two-thirds of the funds remitted to it under
24 this subsection for improving, leasing, constructing, financing, operating, or
25 acquiring facilities and properties as needed to provide for a convention center
26 facility, including parking facilities for the convention center. The remainder
27 of the funds must be used to promote travel and tourism. Debt issued to
28 finance these improvements or facilities and that is secured by occupancy tax
29 proceeds remitted under this subdivision must mature on or before December
30 31, ~~2029-2039~~.
- 31 (2) After December 31, ~~2029-2039~~. – After December 31, ~~2029-2039~~, the
32 Authority must use at least two-thirds of the funds remitted to it under this
33 subsection to promote travel and tourism in the area and must use the
34 remainder for tourism-related expenditures."

35 36 **BUNCOMBE COUNTY OCCUPANCY TAX CHANGES**

37 **SECTION 3.1.(a)** Sections 21 and 22 of Part VI of Chapter 908 of the 1983 Session
38 Laws, as amended by Section 1 of Chapter 942 of the 1985 Session Laws, Section 1 of S.L.
39 2001-162, Section 60(a) of S.L. 2013-414, and Section 8 of S.L. 2015-128, read as rewritten:

40 "Sec. 21. Disposition of Taxes Collected. – (a) Buncombe County shall remit the net proceeds
41 of the occupancy tax to the county Tourism Development Authority in Buncombe County. "Net
42 proceeds" means gross proceeds less the cost to the county of administering and collecting the
43 tax. ~~The Authority may not use more than ten percent (10%) of the funds distributed to it pursuant~~
44 ~~to this subsection for administrative expenses of the Authority tax, not to exceed five percent~~
45 ~~(5%) of the gross proceeds collected each year.~~

46 (b) The Authority may expend any funds ~~distributed~~ remitted to it pursuant to subsection
47 (a) of this section only as follows:

- 48 (1) ~~Three-fourths~~ Two-thirds of the funds ~~may~~ shall be used only (i) to further the
49 development of travel, tourism, meetings and conventions events in the county
50 through State, national, and international advertising-marketing, advertising,
51 sales, and promotion ~~promotion~~ and (ii) for the administrative expenses of the

- Authority, not to exceed twenty percent (20%) of the net proceeds for the applicable fiscal year of the Authority. For purposes of this provision, administrative expenses shall include expenses of the Authority for salaries, benefits, operations, and facilities.
- (2) ~~The Authority shall create a~~ The remainder shall be split evenly between the following funds created by the Authority, with no portion of the remainder being used for operational expenses:
- a. ~~The Tourism Product Development Fund and, in order to further economic development in the county, shall credit the remainder of the funds to the Tourism Product Development Fund. The purpose of the fund shall be~~ Fund. The Authority shall use monies in the Fund to provide financial assistance for major tourism projects in order to significantly increase patronage of lodging facilities in, and further economic development in, Buncombe County.
- b. The Legacy Investment From Tourism Fund. The Authority shall use monies in the Fund to provide financial assistance for tourism-related projects that are designed to (i) increase patronage of lodging facilities, meeting facilities, and convention facilities by attracting tourists, business travelers, or both and (ii) benefit the community at large in Buncombe County.
- (c) The Authority shall administer and spend the funds in the Tourism Product Development Fund as follows:
- (1) The Authority shall create a Product Development Committee to review and evaluate proposals from applicants for tourism capital ~~projects and to projects,~~ including capital maintenance. No proceeds may be used for operational expenses. The Product Development Committee shall make recommendations to the Authority regarding use and disposition of funds derived from the Tourism Product Development Fund. A for-profit entity is not eligible to receive funds or loans from the Tourism Product Development Fund. Only upon recommendation of the Product Development Committee, and upon a vote of three-fourths of the current voting members of the Authority to expend such funds, the Authority may award funds to qualified projects in the form of outright grants of money and may guarantee loans and participate in pledges of debt service for these ~~projects.~~ projects; provided, however, that no loan guarantee may exceed the amount committed from the Fund for the project. Projects must be located in Buncombe County unless the Commissioners of Buncombe County give specific approval to projects outside the county. Applicants must provide a feasibility study satisfactory to the Product Development Committee demonstrating the project's economic value to the area and the number of estimated new room nights ~~if the project will generate.~~
- (2) To be a qualified project, a project must be expected to ~~significantly~~ increase patronage of lodging facilities in Buncombe County.
- (3) The Authority is not required to exhaust all of the funds generated each year and may accumulate money in order to create a revolving fund to further the purposes of this section. The Authority may not ~~commit~~ commit, for purposes of debt ~~service~~ service, a portion of the net funds in excess of thirty-three percent (33%) of ~~the average net funds received in any one year over a rolling three-year average for a period of time in excess of 10 years. The Authority may not commit for purposes of debt service in excess of ten percent (10%) of net funds received in any one year for any single project.~~ 15 years for any

- 1 one project. The Authority shall not be the sole funding source for any debt
2 service.
- 3 (4) The Product Development Committee need not be comprised solely of
4 members of the Authority. A majority of the members of the Product
5 Development Committee must be persons who are owners or operators of
6 hotels, motels, or ~~other taxable tourist accommodations.~~ bed and breakfasts.
- 7 (d) The Authority shall administer and spend the funds in the Legacy Investment From
8 Tourism Fund as follows:
- 9 (1) The Authority shall create a Legacy Investment From Tourism Committee to
10 review and evaluate proposals from applicants for tourism-related capital
11 projects, including capital maintenance, and project administration, design,
12 restoration, maintenance, and rehabilitation as well as enhancement of natural
13 resources and expansion of necessary infrastructure. The Legacy Investment
14 From Tourism Committee shall make recommendations to the Authority
15 regarding use and disposition of funds derived from the Legacy Investment
16 From Tourism Fund. A for-profit entity is not eligible to receive funds or loans
17 from the Legacy Investment From Tourism Fund. The Legacy Investment
18 From Tourism Fund cannot be used for operational expenses. Only upon
19 recommendation of the Legacy Investment From Tourism Committee, and
20 upon a vote of three-fourths of the current voting members of the Authority to
21 expend such funds, the Authority may award funds to qualified projects in the
22 form of outright grants of money and may guarantee loans and participate in
23 pledges of debt service for these projects; provided, however, that no loan
24 guarantee may exceed the amount committed from the Fund for the project.
25 Projects must be located in Buncombe County unless the Commissioners of
26 Buncombe County give specific approval to projects outside the county.
27 Applicants must provide information as to how the project balances visitor
28 and resident needs as part of the application process for a Legacy Investment
29 From Tourism Fund project.
- 30 (2) To be a qualified project, a project must be expected to (i) increase patronage
31 of lodging facilities, meeting facilities, and convention facilities by attracting
32 tourists, business travelers, or both and (ii) benefit the community at large in
33 Buncombe County.
- 34 (3) The Authority is not required to exhaust all of the funds generated each year
35 and may accumulate money in order to create a revolving fund to further the
36 purposes of this section. The Authority may not commit for purposes of debt
37 service a portion of the net funds in excess of thirty-three percent (33%) of the
38 average net funds received over a rolling three-year average for a period of
39 time in excess of 15 years for any one project. The Authority shall not be the
40 sole funding source for any debt service.
- 41 (4) The Legacy Investment From Tourism Committee need not be comprised
42 solely of members of the Authority. A majority of the members of the Legacy
43 Investment From Tourism Committee must be persons who are owners or
44 operators of hotels, motels, or bed and breakfasts.

45 "Sec. 22. Appointment, Duties of Tourism Development Authority. – (a) When the board of
46 county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it
47 shall also adopt a resolution creating a county Tourism Development Authority, which shall be
48 a public authority under the Local Government Budget and Fiscal Control Act and shall be
49 composed of the following 11 members:

- (1) A county commissioner appointed by the ~~board of county commissioners,~~
Buncombe County Board of Commissioners, who shall serve as an ex officio,
nonvoting member;
- (2) A member of the Asheville City Council appointed by the ~~board of county commissioners,~~
Asheville City Council, who shall serve as an ex officio,
nonvoting member;
- (3) Six owners or operators of hotels, motels, bed and breakfasts, or vacation
rental management companies, four of which own or operate hotels, motels,
~~bed and breakfasts, or vacation rental management companies, or bed and~~
breakfasts, with more than 100 rental units, two of whom shall be appointed
by the Asheville City Council and two by the ~~board of county commissioners;~~
Buncombe County Board of Commissioners; and ~~two one of which own or~~
~~operate owns or operates~~ hotels, motels, bed and breakfasts, or vacation rental
management companies, with 100 or fewer rental units, ~~one of whom who~~
shall be appointed by the Asheville City ~~Council~~ Council; and one ~~of which~~
owns or operates hotels, motels, or bed and breakfasts with 100 or fewer rental
units, who shall be appointed by the board of county
~~commissioners;~~Buncombe County Board of Commissioners.
- (4) Three individuals actively involved in the tourist business who have
participated in tourism ~~promotion and do not own or operate hotels, motels,~~
~~or other taxable tourist accommodations,~~ promotion, appointed as follows:
~~one by the Asheville City Council, one by the Asheville Area Chamber of~~
~~Commerce, and one by the board of county commissioners.~~one vacation rental
owner or vacation rental management company owner appointed by the
Buncombe County Board of Commissioners; one executive from a ticketed
tourist attraction appointed by the Asheville Area Chamber of Commerce; and
one restaurant owner, owner of a brewery, distillery, or winery open for tours
or tastings, or executive director of a ticketed arts organization appointed by
the Asheville City Council.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall
be filled by the appointing authority of the member creating the vacancy. Members appointed to
fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to
fill. Members shall serve three-year terms, ~~except the initial members who shall serve the~~
~~following terms:~~

- (1) ~~members appointed pursuant to subdivisions (1) and (2) above shall serve~~
~~one year terms;~~
- (2) ~~of the members appointed pursuant to subdivision (3) above, one appointee of~~
~~the city council and the board of commissioners shall serve a two year term~~
~~and one appointee of the city council and the board of commissioners shall~~
~~serve a three year term, as designated by the city council and board of county~~
~~commissioners;~~
- (3) ~~of the three members appointed pursuant to subdivision (4) above, the~~
~~appointee of the Asheville City Council shall serve a one year term, the~~
~~appointee of the Asheville Area Chamber of Commerce shall serve a two year~~
~~term, and the appointee of the board of county commissioners shall serve a~~
~~three year term.~~

~~Members terms and~~ may serve no more than two consecutive terms. The members shall elect a
chair, who shall serve for a term of two years. The Authority shall meet at the call of the chair
and shall adopt rules of procedure to govern its meetings. The finance officer for Buncombe
County shall be the ex officio finance officer of the Authority.

...

(d) The following definitions apply in this section:

(1) Vacation rental management company. – A corporate entity having at least five rental units that are available for rent in Buncombe County for more than sixty percent (60%) of the days in the calendar year.

(2) Vacation rental management company owner. – The owner of a corporate entity having at least five rental units that are available for rent in Buncombe County for more than sixty percent (60%) of the days in the calendar year.

(3) Vacation rental owner. – The owner of at least one vacation rental unit in Buncombe County, registered in compliance with all local and State laws, that is available for rent for more than sixty percent (60%) of the days in the calendar year."

SECTION 3.1.(b) Subsection (a) of this section becomes effective July 1, 2022, and applies to occupancy tax proceeds collected by the county and remitted to the Buncombe Tourism Development Authority on or after that date. Current members of the Authority at the time of the effective date of this act shall serve out their remaining terms prior to the appointments contemplated herein. The remainder of this act is effective when it becomes law.

EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.